

CHAPTER NO. 338

SENATE BILL NO. 296

By Haynes

Substituted for: House Bill No. 712

By Sands, McMillan, Goins, Baird, Winningham

AN ACT To amend Tennessee Code Annotated, Section 40-18-110, relative to lesser included offenses.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-18-110, is amended by deleting the section in its entirety and by substituting instead the following:

(a) When requested by a party in writing prior to the trial judge's instructions to the jury in a criminal case, the trial judge shall instruct the jury as to the law of each offense specifically identified in the request that is a lesser included offense of the offense charged in the indictment or presentment. However, the trial judge shall not instruct the jury as to any such offense unless the judge determines that the record contains any evidence which reasonable minds could accept as to the lesser included offense. In making this determination, the trial judge shall view the evidence liberally in the light most favorable to the existence of the lesser included offense without making any judgment on the credibility of such evidence. The trial judge shall also determine whether the evidence, viewed in this light, is legally sufficient to support a conviction for the lesser included offense.

(b) In the absence of a written request from a party specifically identifying the particular lesser included offense or offenses on which a jury instruction is sought, the trial judge may charge the jury on any lesser included offense or offenses, but no party shall be entitled to any such charge.

(c) Notwithstanding any other provision of law to the contrary, when the defendant fails to request the instruction of a lesser included offense as required by this section, such instruction is waived. Absent a written request, the failure of a trial judge to instruct the jury on any lesser included offense may not be presented as a ground for relief either in a motion for a new trial or on appeal.

(d) Prior to instructing the law to the jury, the trial judge shall give the parties an opportunity to object to the proposed lesser included offense instructions. If the defendant fails to object to a lesser included offense instruction, the inclusion of that lesser included offense instruction may not be presented as a ground for relief either in a motion for a new trial or on appeal. Where the defendant objects to an instruction on a lesser included offense and the judge does not instruct the jury on that offense, the objection shall constitute a waiver of any objection in the motion for a new trial or on appeal concerning the failure to instruct on said lesser included offense. The defendant's objection shall not prevent the district attorney general from requesting lesser included offense instructions or prevent the judge from instructing lesser included offenses.


(e) When the defendant requests an instruction on a lesser included offense, the judge may condition the instruction on the defendant's consent to an

amendment to the indictment or presentment, with the consent of the district attorney general, so that if there is a conviction for the requested lesser offense the request shall constitute a waiver of any objection in the motion for new trial and on appeal. The defendant may be required to execute a written document actually consenting to the amendment so that there may be a lawful conviction for such lesser offense. If the district attorney general does not consent to the amendment, the defendant may raise the issue of failure to give the requested charge on appeal. This shall not be construed as requiring an instruction on a lesser offense.

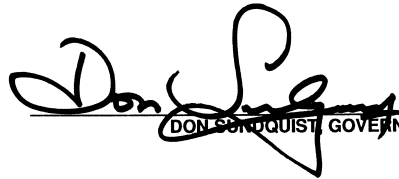
SECTION 2. This act shall take effect on January 1, 2002, the public welfare requiring it, and shall govern all trials conducted on or after that date.

PASSED: May 24, 2001


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 5th day of June 2001


DON SUNDQUIST, GOVERNOR